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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/786,034	04/23/01	CASTILLO	G PROTEO.P07C1

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HM12/0703

EXAMINER

DELACROIX MUIRHEI.C

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

07/03/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/786,034

Applicant(s)  
CASTILLO et al.

Examiner  
Cybille Delacroix-Muirheid

Art Unit  
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11 and 16 is/are allowed.
- 6) ☒ Claim(s) 1, 4-7, 12, 14, and 15 is/are rejected.
- 7) ☒ Claim(s) 2, 3, and 13 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

### **DETAILED ACTION**

Claims 1-16 are presented for prosecution on the merits.

#### ***Priority***

1. If applicant desires priority under 35 U.S.C. 120 and 119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_\_" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

#### ***Specification***

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

#### ***Claim Objections***

3. Claims 1, 4, 8, 12 and 16 are objected to because of the following informalities: in claims 1, 8, 12 and 16, line 4, after "effective amount", the phrase should read --of one or more substances selected from the group consisting of...-- . In claim 4, the all limitations enclosed in ( ) should be deleted or if desired in the claim, should be properly incorporated without the ( ). Appropriate correction is required.

4. Claims 4, 5, 7, 14, 15 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in

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independent form. The intended use of the claimed compositions, e.g. for treating amyloidoses, fails to further limit the physical/structural aspects of the claimed compositions .

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims ~~1, 4, 5~~, 6, 7, ~~12~~, 14, 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Hastings et al., 6,224,871.

Hastings et al. disclose the invention substantially as claimed. Specifically, Hastings et al. teach a nutritional dietary supplement comprising extract from Uncaria tomentosa, echinacea root, bilberry extract, or aloe vera. Please see col. 2, lines 8-11; col. 4 , lines 50-58. The supplement may be taken orally. Col. 5, lines 35-41.

With respect to the claims which recite the intended use of the claimed invention, the intended use is not germane to the patentability of the composition itself.

Claims 2-3, 13 are objected to as being dependent upon a rejected base claim.

***Allowable Subject Matter***

Claims 8-11 and 16 are free from the prior art because the prior art does not disclose or fairly suggest Applicant's claimed methods.

***Conclusion***

Claims 1, 4-7, 12, 14, 15 are rejected.

Claims 8-11 and 16 are free from the prior art.

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Claims 2-3, 13 are objected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

CDM

July 2, 2001

  
Cybille Delacroix-Muirheid  
Patent Examiner Group 1600